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MINISTRY OF LAW

(Legislative Department)

New Delhi, the 26th October, 1962/Kartika 4, 1884 (*Saka*)

THE DEFENCE OF INDIA ORDINANCE, 1962

No. 4 OF 1962

Promulgated by the President in the Thirteenth Year of the Republic of India.

An Ordinance to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences.

WHEREAS the President has declared by Proclamation under clause (1) of article 352 of the Constitution that a grave emergency exists whereby the security of India is threatened by external aggression;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Defence of India Ordinance, 1962.

Short title, extent, application commencement and savings.

(2) It extends to the whole of India and it applies also—

(a) to citizens of India outside India;

(b) to persons in the services of the Government, wherever they may be;

(c) in respect of the regulation and discipline of the naval, military and air force or any other armed forces of the Union, to members of, and persons attached to, employed with, or following, those forces, wherever they may be;

(d) to, and to persons on, ships and aircraft registered in India, wherever they may be.

(3) This section shall come into force at once and the remaining provisions of this Ordinance shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions and different areas.

(4) The cesser of operation of this Ordinance shall not affect—

(a) the previous operation of, or any thing duly done or suffered under, this Ordinance or any rule made thereunder or any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Ordinance or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Ordinance or any contravention of any rule made under this Ordinance or of any order made under any such rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Ordinance had not ceased to operate.

Definitions. 2. In this Ordinance, unless the context otherwise requires,—

(a) 'civil defence' includes any measures not amounting to actual combat, for affording defence against any form of hostile attack by a foreign power or for depriving any form of hostile attack by a foreign power of its effect either wholly or in part, whether such measures are taken before, during or after the time of the attack;

(b) 'Civil Defence Services' means the services formed wholly or mainly to meet the needs of civil defence;

(c) 'prescribed' means prescribed by rules made under this Ordinance;

(d) 'Proclamation of Emergency' means a Proclamation issued under clause (1) of article 352 of the Constitution;

(e) 'State Government' in relation to a Union territory means the administrator thereof.

CHAPTER II

EMERGENCY POWERS

3. (1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community. Power to make rules.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters, namely :—

(1) ensuring the safety and welfare of the Armed Forces of the Union, ships and aircrafts, and preventing the prosecution of any work likely to prejudice the operations of the Armed Forces of the Union;

(2) prohibiting anything likely to prejudice the training, discipline or health of the Armed Forces of the Union;

(3) preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering the service of the Government;

(4) preventing or prohibiting anything likely to assist the enemy or to prejudice the successful conduct of military operations or civil defence including—

(a) communications with the enemy or agents of the enemy;

(b) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy;

(c) contribution to, participation or assistance in, the floating of loans raised by or on behalf of the enemy;

(d) advance of money to, or contracts or commercial dealings with the enemy, enemy subjects or persons residing, carrying on business, or being, in enemy territory; and

(e) acts, publications or communications prejudicial to civil defence;

(5) preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice India's relations with foreign powers or to prejudice maintenance of peaceful conditions in all areas including the tribal areas, or to promote feelings of ill-will, enmity or hatred between different classes of the people of India;

(6) requiring the publication of news and information;

(7) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and the removal of persons from such areas;

(8) requiring any person or class of persons to comply with any scheme of defence or civil defence;

(9) ensuring the safety of—

(a) ports, dockyards, lighthouses, light-ships and aerodromes;

(b) railways, tramways, roads, canals and all other means of transport by land or water;

(c) telegraphs, post offices, signalling apparatus and all other means of communication;

(d) sources and systems of water-supply, works for the supply of water, gas or electricity, and all other works for public purposes;

(e) vessels, aircraft, transport vehicles as defined in the Motor Vehicles Act, 1939, and rolling stocks of railways and 4 of 1939. tramways;

(f) warehouses and all other places used or ~~intended to be used~~ for storage purposes;

(g) mines, oil-fields, factories or industrial or commercial undertakings generally, or any mine, oil-field, factory or industrial or commercial undertaking in particular;

(h) laboratories and institutions where scientific research is conducted;

(i) all works and structures being part of, or connected with, anything earlier mentioned in this clause; and

(j) any other place or thing used or intended to be used for the purposes of Government or a local authority, the protection of which is considered necessary or expedient for securing the defence of India and civil defence, the public order, or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community;

(10) the demolition, destruction or rendering useless in case of necessity of any building or other premises or any other property;

(11) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals, in ports and territorial, tidal and inland waters;

(12) the control of lights and sounds;

(13) the control of persons entering, travelling in or departing from, India;

(14) restricting and regulating the charter of foreign vessels;

(15) regulating the structure and equipment of vessels, for the purpose of ensuring the safety thereof and of persons therein;

(16) regulating work in dockyards and shipyards in respect of the construction and repairs of vessels;

(17) prohibiting or regulating the sailings of vessels from ports, traffic at aerodromes and the movement of aircraft, and traffic on railways, tramways and roads, and reserving and requiring to be adapted, for the use of the Central Government, all or any accommodation in vessels, aircraft, railways, tramways or road vehicles for the carriage of persons, animals or goods;

(18) the impressment of vessels, aircraft, vehicles, and animals for transport;

(19) prohibiting or regulating the use of postal, telegraphic or telephonic services, including the taking possession of such services, and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;

(20) regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams;

(21) the control of trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to articles or things of any description whatsoever which may be used in connection with the conduct of military operations or civil defence or for maintaining supplies and services essential to the life of the community;

(22) the control of agriculture (including the cultivation of agricultural land and crops to be raised therein) for the purpose of increasing the production and supply of foodgrains and other essential agricultural products;

(23) the provision, storage and maintenance of commodities and things required for the conduct of military operations or for civil defence;

(24) the provision, construction, maintenance or alteration of buildings, premises or other structures or excavations required for the conduct of military operations or civil defence;

(25) the protection of property by the performance of such fire prevention and other duties as may be allotted to any person;

(26) the securing of any building, premises or other structures from being readily recognisable in the event of a hostile attack by a foreign power;

(27) ensuring the ownership and control of mines and oil-fields by the citizens;

(28) controlling the possession, use or disposal of, or dealing in, coin, bullion, bank notes, currency notes, securities or foreign exchange;

(29) the control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water-supply;

(30) the requisitioning and acquisition of any movable property; and the principles on which and the manner in which compensation shall be determined and given in respect of such requisitioning or acquisition;

(31) prohibiting or regulating the possession, use or disposal of—

(a) explosives, inflammable substances, corrosive and other dangerous substances or articles, arms and ammunitions of war;

(b) vessels;

(c) wireless telegraphic apparatus;

(d) aircraft, and

(e) photographic and signalling apparatus and any means of recording information;

(32) prohibiting or regulating the bringing into, or taking out of, India and the possession, use or transmission of ciphers and other secret means of communicating information;

(33) prohibiting or regulating the publication of inventions and designs;

(34) prohibiting or regulating the publication of results of research work having a bearing on efforts relating to defence of India or military operations;

(35) preventing the disclosure of official secrets;

(36) prohibiting or regulating meetings, assemblies, fairs and processions;

(37) preventing or controlling any use of uniforms, whether official or otherwise, flags, official decorations like medals, badges and other insignia and anything similar thereto, where such use is calculated to deceive or to prejudice the public safety, the maintenance of public order, the defence of India or civil defence;

(38) ensuring the accuracy of any report or declaration legally required of any person;

(39) preventing the unauthorised change of names;

(40) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purporting to be, or resembling, an official person, official document or official property;

(41) the precautionary measures which the Government or any department thereof or any local authority, members of police forces and fire brigades and members of any other service or authority employed primarily for purposes other than civil defence purposes should be required to take within their respective jurisdictions or with respect to any personnel employed by them;

(42) the seizure and custody or destruction of injured, unclaimed or dangerous animals;

(43) the salvage of damaged buildings and property and disposal of the dead;

(44) the evacuation of areas and the removal of property or animals therefrom;

(45) the accommodation in any area of persons evacuated from another area and the regulation of the conduct of evacuated persons accommodated in such area;

(46) the billeting of evacuated persons or persons authorised to exercise functions under this Ordinance;

(47) the instructions of members of the public in civil defence and their equipment for purposes of civil defence;

(48) the entry into, and search of, any place reasonably suspected of being used for any purpose prejudicial to the public safety or interest, to the defence of India or civil defence or to the efficient conduct of military operations, and for the seizure and disposal of anything found there and reasonably suspected of being used for such purpose.

(3) The rules made under sub-section (1) may further--

(i) provide for the arrest and trial of persons contravening any of the rules or any order issued thereunder;

(ii) provide that any contravention of, or any attempt to contravene or any abetment of, or any attempt to abet, the contravention of any of the provisions of the rules or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both;

(iii) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in clause (ii) has been committed and for the adjudication of such forfeiture whether by a court or by any other authority;

(iv) confer powers and impose duties--

(a) upon the Central Government or officers and authorities of the Central Government as respects any matter, notwithstanding that the matter is one in respect of which the State Legislature has power to make laws; and

(b) upon any State Government or officers and authorities of any State Government as respects any matter, notwithstanding that the matter is one in respect of which the State Legislature has no power to make laws;

(v) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules or any order made thereunder;

(vi) provide for preventing obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules or any order made thereunder;

(vii) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules or any order made thereunder;

(viii) empower or direct any authority to take such action as may be specified in the rules or as may be necessary to such authority for the purpose of ensuring the public safety or interest or the defence of India or civil defence;

(ix) provide for charging fees in respect of the grant or issue of a licence, permit, certificate or other document for the purposes of the rules.

Special powers to control civilian personnel employed in connection with the Armed Forces of the Union.

4. The Central Government may, by notification in the Official Gazette, direct by general or special order that any persons who not being members of the Armed Forces of the Union are attached to, or employed with, or following those Forces, shall be subject to naval, military or air force law, and thereupon such persons shall be subject to discipline and liable to punishment for offences under the Navy Act, 1957, the Army Act, 1950 and the Air Force Act, 1950, as the case may be, as if they were included in such class of persons subject to any of those Acts as may be specified in the notification. 62 of 1957.
46 of 1950.
45 of 1950.

Enhanced penalties.

5. (1) If any person with intent to wage war against India or to assist any country committing external aggression against India, contravenes any provision of the rules made under section 3 or any order issued under any such rule, he shall be punishable with death or imprisonment for life, or imprisonment for a term which may extend to ten years and shall also be liable to fine.

(2) If any person,—

(a) contravenes any such provision of or any such rule or order made under the Indian Aircraft Act, 1934 as may be notified in this behalf by the Central Government, or 22 of 1934.

(b) in any area notified in this behalf by a State Government, contravenes any such provision of, or any such rule made under, the Arms Act, 1959 the Indian Explosives Act, 1884 or the Explosives Substances Act, 1908, as may be notified in this behalf by the State Government, 54 of 1959.
4 of 1884.
6 of 1908.

he shall, notwithstanding anything contained in any of the aforesaid Acts or rules made thereunder, be punishable with imprisonment for a term which may extend to five years, or, if his intention is to assist any country committing external aggression against India, or, to wage war against India, with death, imprisonment for life or imprisonment for a term which may extend to ten years and shall in either case also be liable to fine.

(3) For the purposes of this section, any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of any provision of any law, rule or order shall be deemed to have contravened that provision.

6. During the continuance of this Ordinance,—

Temporary
amend-
ments to
Acts.

19 of 1923.

(1) the Indian Official Secrets Act, 1923 shall have effect as if—

(a) in sub-section (1) of section 5 thereof, after the words 'in his possession or control', the words 'any information likely to assist the enemy, or' had been inserted;

(b) for sub-section (4) of section 5 thereof, the following sub-section had been substituted, namely:—

“(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to five years, or if such offence is committed with intent to assist any country committing external aggression against India or to wage war against India, with death or imprisonment for life or imprisonment for a term which may extend to ten years and shall in either case also be liable to fine.”;

(c) after clause (a) of section 12 thereof, the following clause had been inserted, namely:—

“(aa) an offence under section 5 shall be a cognizable and non-bailable offence;”;

22 of 1934.

(2) the Indian Aircraft Act, 1934 shall have effect as if—

(a) at the end of clause (r) of sub-section (2) of section 5, the following words had been inserted, namely:—

“including the taking of steps necessary to secure compliance with, or to prevent contravention of, the rule regulating such matters, or, where any such rule has been contravened, to rectify, or to enable proceedings to be taken in respect of, such contravention.”;

(b) in clause (b) of sub-section (1) of section 8, for the words, brackets and figures “clause (h) or clause (i) of sub-section (2) of section 5”, the words, brackets, figures and letters ‘clauses (d), (e), (h), (i), (k) or (l) of sub-section (2) of section 5, or the commission of an offence punishable under section 11,’ had been substituted;

(c) in section 11, after the words ‘in the air’, the words ‘or in such a manner as to interfere with any of the Armed Forces of the Union or any ships or aircraft’ had been inserted;

(d) in section 13, for the words, brackets, figures and letters “clause (i) or clause (l) of sub-section (2) of section 5”, the words, brackets, figures and letters “clauses (c), (d), (e), (h), (i), (j), (k) or (l) of sub-section (2) of section 5 or punishable under section 11” had been substituted; and

(e) section 14 had been omitted;

(3) the Motor Vehicles Act, 1939 (in this clause referred to as the 'said Act') shall have effect subject to the following provisions, namely :—

“(a) the State Government may, by notification in the Official Gazette, authorise subject to such conditions, if any, as it may think fit to impose, any person—

(i) also to perform such functions of the State Government under Chapter IV (in this clause referred to as the 'said Chapter') of the said Act, other than the making of rules as may be specified in the notification; and

(ii) to perform to the exclusion of the State Transport Authority or Regional Transport Authority, as the case may be, such functions of the State Transport Authority or any Regional Transport Authority under the said Chapter as may be specified in the notification;

and the expression 'proper authority' in this clause shall in relation to the performance of any such function as aforesaid be construed in accordance with the provisions of such notification, if any, relating to that function;

(b) notwithstanding anything to the contrary in section 58 or section 62 of the said Act, the proper authority may grant a permit or a temporary permit under the said Chapter to be effective for any specified period not exceeding five years;

(c) the State Government may, by general or special order, in writing, provide that the proper authority—

(i) in deciding to grant or refuse to grant a permit under the said Chapter shall not be bound to take into consideration representations made by any persons other than the applicant for the permit or to follow the procedure laid down in section 57 of the said Act, and may take into consideration an application for a stage carriage permit or a public carrier's permit which has not complied with the provisions of sub-section (2) of that section;

(ii) in fixing the maximum and minimum fares or freights for stage carriages and public carriers, shall not be bound to give the representatives of the interests affected an opportunity of being heard or to follow the procedure laid down in section 43 of the said Act, or where such action is taken for the purpose of preventing the charge of excess fares or freights, to have regard to any of the considerations set forth in clauses (a) to (d) of sub-section (1) of that section;

(d) without prejudice to the provisions of section 60 of the said Act, the proper authority may, if in its opinion the public interest so requires, cancel, or modify the conditions of, or suspend for such period as it thinks fit, any permit or counter-signature under the said Chapter which is valid in its jurisdiction;

(e) the State Government may, by general or special order in writing, exempt from all or any of the provisions of the said Chapter any transport vehicle used or required for use in connection with any work or purpose declared by the State Government in the order to be a work or purpose connected with the defence of India, the conduct of military operations or civil defence;

(f) if the State Government by general or special order in writing so directs, the provisions of sub-section (2) of section 38 of the said Act shall have effect in relation to any controlled motor vehicles specified in the order as if the words "not being in any case more than two years or less than six months" had been omitted.

Explanation.—In this clause 'controlled motor vehicle' means a motor vehicle to which the provisions of the Civil Motor Transport Vehicles Order, 1944 or any other substantially similar Order for the time being in force apply."

CHAPTER III

CIVIL DEFENCE SERVICES

7. (1) The State Government may constitute for any area within the State a body of persons to be called the Civil Defence Service and may appoint a person (hereinafter called the Controller) to command such body. Constitution of Civil Defence Service.

(2) Subject to any orders which the Central Government may make in this behalf, any member of a Civil Defence Service of any State may at any time be required to discharge functions in relation to civil defence in any other State and shall while so discharging such functions be deemed to be a member of a Civil Defence Service of that other State and be vested with the powers, functions and privileges and be subject to the liabilities of a member of a Civil Defence Service of that other State.

8. (1) Any authority authorised in this behalf by the State Government may appoint as members of a Civil Defence Service so many persons who are fit and willing to serve as such as it is authorised by the State Government to appoint, and the Controller may appoint any such member to any office or command in the Service. Appointment of members and officers.

(2) Every person so appointed to be a member of a Civil Defence Service shall be given a certificate of membership in such form as may be prescribed.

9. The Controller or any other authority authorised in this behalf by the State Government may, by order in writing, dismiss summarily from a Civil Defence Service any member thereof if, in the opinion of the Controller or such other authority, he fails to discharge satisfactorily, or is guilty of misconduct in the discharge of, his duties as such member, or his continued presence in the Service is otherwise undesirable. Dismissal of members of Civil Defence Service.

Functions
of mem-
bers of
Civil
Defence
Services.

10. (1) The members of a Civil Defence Service shall perform such functions in relation to the carrying out of measures for civil defence as may be assigned to them by rules made under this Ordinance or by any other law for the time being in force.

(2) The Controller or any person authorised in this behalf by the Controller or by the State Government may by order at any time call out a member of a Civil Defence Service for training or to discharge any such functions as aforesaid.

Penalty.

11. If any member of a Civil Defence Service on being called out by an order under sub-section (2) of section 10 neglects or refuses without sufficient excuse to obey such order or to discharge his functions as a member of the Civil Defence Service or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction by a competent court, be punishable with fine which may extend to five hundred rupees.

Power to
make
rules.

12. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may—

(a) prescribe the duties of members of Civil Defence Services and regulate the manner in which they may be called out for service;

(b) regulate the organisation, appointment, conditions of service, discipline, accoutrement, and clothing of members of any or all of the Civil Defence Services;

(c) prescribe the form of certificates of membership of any or all of the Civil Defence Services;

(d) provide that a contravention of, or an attempt to contravene, and any abetment of or attempt to abet the contravention of, any of the provisions of the rules or of any order issued under any such provision shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both;

(e) provide for the arrest and trial of persons contravening, or reasonably suspected of contravening, any of the provisions of the rules or of any order issued under any such provision;

(f) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in clause (d) has been committed;

(g) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules or of any order issued thereunder;

(h) provide for preventing the obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules or of any order issued thereunder;

(i) prohibit attempts to screen from punishment any person contravening any of the rules.

CHAPTER IV

SPECIAL TRIBUNALS

13. (1) The State Government may, for the whole or any part of the State, constitute one or more Special Tribunals which or each of which shall consist of three members appointed by that Government. Constitution of Special Tribunals.

(2) No person shall be appointed as a member of a Special Tribunal unless he—

(a) is qualified under clause (2) of article 217 of the Constitution for appointment as a Judge of a High Court; or

5 of 1898.

(b) has exercised the powers under the Code of Criminal Procedure, 1898 (hereafter in this Chapter referred to as the Code) of any one or more of the following, namely:—

(i) Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate, Additional Chief Presidency Magistrate,

(ii) District Magistrate, Additional District Magistrate.

14. During the period during which the Proclamation of Emergency is in operation, the State Government may, by general or special order, direct that a Special Tribunal shall try any offence— Jurisdiction of Special Tribunals.

(a) under any rule made under section 3, or

(b) punishable with death, imprisonment for life or imprisonment for a term which may extend to seven years,

triable by any court having jurisdiction within the local limits of the jurisdiction of the Special Tribunal and may in any such order direct the transfer to the Special Tribunal of any particular case from any other Special Tribunal or any other criminal court not being a High Court.

15. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial. Procedure of Special Tribunals.

(2) Save in cases of trials of offences punishable with death or imprisonment for life, it shall not be necessary in any trial for a Special Tribunal to take down the evidence at length in writing, but the Special Tribunal shall cause a memorandum of the substance of what each witness deposes, to be taken down, and such memorandum shall be signed by a member of the Special Tribunal and shall form part of the record.

(3) A Special Tribunal shall not be bound to adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and to re-hear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if the behaviour of the accused in court has been such as, in the opinion of the Special Tribunal, to impede the course of justice.

(6) In the event of any difference of opinion among the members of a Special Tribunal, the opinion of the majority shall prevail.

(7) The State Government may, by notification in the Official Gazette, make rules providing for—

(i) the times and places at which Special Tribunals may sit; and

(ii) the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person.

(8) A Special Tribunal shall, in all matters in respect to which no procedure has been prescribed by this Ordinance or by rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

Exclusion
of public
from pro-
ceedings
of Special
Tribunals.

16. In addition, and without prejudice, to any powers which a Special Tribunal may possess by virtue of any law for the time being in force to order the exclusion of the public from any proceedings, if at any stage in the course of a trial of any person before a Special Tribunal, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the trial would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Special Tribunal may make an order to that effect, but the passing of the sentence shall in any case take place in public.

Power of
Special
Tribunals.

17. A Special Tribunal shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Sentences
of Special
Tribunals.

18. (1) A Special Tribunal may pass any sentence authorised by law.

(2) A person sentenced by a Special Tribunal—

(a) to death or imprisonment for life, or

(b) to imprisonment for a term extending to ten years under section 5 of this Ordinance or under sub-section (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 19 of 1923. 6 of this Ordinance,

shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a Special Tribunal, and no court shall have authority to revise such order or sentence, or to transfer any

case from a Special Tribunal, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

(3) The powers conferred upon the appropriate Government by Chapter XXIX of the Code shall apply in respect of a person sentenced by a Special Tribunal.

CHAPTER V

REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY

19. (1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning: Requisitioning of immovable property.

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

20. Whenever in pursuance of section 19 the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:— Payment of compensation.

(i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality;

(ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—In this section, the expression “person interested” means the person who was in actual possession of the property requisitioned under section 19 immediately before the requisition, or where no person was in such actual possession, the owner of such property.

Power to obtain information and give direction.

21. The Central Government or the State Government, as the case may be, may, with a view to requisitioning any property under section 19 or determining the compensation payable under section 20, by order—

(a) require any person to furnish to the authority mentioned therein such information in his possession relating to any property as may be specified;

(b) direct that the owner, occupier or the person in possession of the property shall not, without the permission of Government, dispose of it or where it is a building, structurally alter it till the expiry of such period as may be specified in the order.

Power of entry into, and inspection of, property, etc.

22. Any person authorised in this behalf by the Central Government or the State Government, as the case may be, may enter into any immovable property and inspect such property for the purpose of determining whether, and if so in what manner, an order under section 19 should be made in relation to such property or with a view to securing compliance with any order made under that section.

Eviction from requisitioned property.

23. (1) Any person remaining in possession of any requisitioned property in contravention of any order made under section 19 may be summarily evicted from the property by any officer empowered in this behalf by the Central Government or the State Government, as the case may be.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

Penalty for contravention of any order regarding requisitioning.

24. If any person contravenes any order made under section 19 or section 21, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Release from requisition.

25. (1) Where any property requisitioned under section 19 is to be released from such requisition, the Government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such

inquiry, if any, as it or he may in any case, consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given.

(2) The delivery of possession of the property to the person specified in the order under sub-section (1) shall be a full discharge of the Government from all liabilities in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is delivered.

26. (1) Any immovable property which has been requisitioned under section 19 may, in the manner hereinafter provided, be acquired in the circumstances and by the Government specified below, namely:—

Acquisition of requisitioned property.

(a) where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, the property may be acquired by that Government if it decides that the value of or the right to use, such works shall, by means of the acquisition of the property, be preserved or secured for the purposes of any Government, or

(b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, the property may be acquired by that Government.

(2) When any Government as aforesaid decides to acquire any immovable property, it shall serve on the owner thereof or where the owner is not readily traceable or the ownership is in dispute, by publishing in the Official Gazette, a notice stating that the Government has decided to acquire it in pursuance of this section.

(3) Where a notice of acquisition is served on the owner of the property or is published in the Official Gazette under sub-section (2) then, at the beginning of the day on which the notice is so served or published, the property shall vest in the Government free from any mortgage, pledge, lien or other similar encumbrances and the period of requisition thereof shall come to an end.

(4) Any decision or determination of a Government under sub-section (1) shall be final, and shall not be called in question in any court.

(5) For the purposes of this section, "works" includes every description of buildings, structures and improvements of the property.

27. The compensation payable for the acquisition of any property under section 26 shall be—

Compensation for acquisition of requisitioned property.

(a) the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which requisitioned property would have fetched in the open market if it had been sold on the date of the requisition,

whichever is less.

CHAPTER VI

SUPPLEMENTAL

Power to
delegate.

28. (1) The Central Government may, by order, direct that any power or duty which by rule under sub-section (1) of section 3 is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also—

(a) by any officer or authority subordinate to the Central Government, or

(b) whether or not the power or duty relates to a matter with respect to which a State Legislature has power to make laws, by any State Government or by any officer or authority subordinate to such Government, or

(c) by any other authority.

(2) The Central Government may, by notification in the Official Gazette, direct that the power to make rules under section 12 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also—

(a) by any officer or authority subordinate to the Central Government, or

(b) by any State Government or by any officer or authority subordinate to such Government.

(3) The State Government may, by order, direct that any power or duty which by rule made under sub-section (1) of section 3 is conferred or imposed on the State Government or which, being any such rule conferred or imposed on the Central Government has been directed under sub-section (1) to be exercised or discharged by the State Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority not being (except in the case of a Union territory) an officer or authority subordinate to the Central Government.

Jurisdic-
tion of
ordinary
courts.

29. (1) Except as may be provided in this Ordinance or in any rule made thereunder or in any order made under any such rule by the Central Government or the State Government or by an officer not below the rank of Collector empowered under sub-section (1) or sub-section (3) of section 28 to make such order, the ordinary criminal and civil courts shall continue to exercise jurisdiction.

(2) For the removal of doubts, it is hereby declared that any provision in any such rule or order as aforesaid to the effect that the decision of any authority not being a court shall be final or conclusive shall be a sufficient excepting provision within the meaning of sub-section (1).

30. Any rule made under section 3 or section 12 and any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

Effect of rules etc., inconsistent with other enactments.

31. Any authority or person acting in pursuance of this Ordinance shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence.

Ordinary avocations of life to be interfered with as little as possible.

32. (1) No order made in exercise of any power conferred by or under this Ordinance shall be called in question in any court.

Savings as to orders.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Ordinance, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

of 1872.

33. Unless otherwise expressly provided in any rules or orders made under Chapter III, nothing contained in that Chapter or any such rules or orders shall apply to the Armed Forces of the Union or to any measures taken by any of the authorities in control of the Armed Forces for the purpose of securing the defence or safety of such forces or for the protection of any naval, military or air force installations.

Chapter III not to apply to measures taken for the protection of Armed Forces.

34. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules made thereunder or any orders issued under any such rule.

Protection of action taken under the Ordinance.

(2) Save as otherwise expressly provided under this Ordinance, no suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Ordinance or any rule made thereunder or any order issued under any such rule.

S. RADHAKRISHNAN,

President.

R. C. S. SARKAR,
Secy. to the Govt of India.

